

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**WESTSIDE REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2023050021**

**System Tracking No. CS0004197**

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 28, 2023.

Ronald Lopez, Individuals with Disabilities Act Specialist, represented the Westside Regional Center (WRC or regional center). Authorized Representatives Melissa Lander and Marlene Luech of Stand Out Advocates, LLC represented Claimant, whose name is not used to protect privacy, and who was not present.

Mr. Lopez, Ms. Lander, Ms. Luech, and Claimant's mother (Mother) testified. Claimant's documents marked Exhibit 3 through Exhibit 12, Exhibit 16, and Exhibit 18

through Exhibit 21 were received in evidence. WRC's documents marked Exhibit A through Exhibit E, Exhibit G through Exhibit K, and Exhibit L through Exhibit N were received in evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing.

## **ISSUES FOR DETERMINATION**

1. Whether WRC should reimburse out-of-pocket expenditures for advocacy services rendered to Claimant.
2. Whether funds from Claimant's Self-Determination Program's spending plan and budget may be used for advocacy services.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On April 3, 2023, WRC notified Claimant it denied his request for "reimbursement for fees paid to an attorney assisting with legal matters regarding IHSS [In-Home Support Services]." (Exh. 4.) WRC articulated its reasons for the denial stating, in pertinent part, the following:

The Self-Determination Program (SDP) cannot be accessed for the requested reimbursement. SDP funds can only be used to purchase services which are federally reimbursable. Legal fees are not included in the list of approved SDP services.

A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Regional center funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. . . .You did not request funding or notify WRC that you were retaining an attorney who was not a vendor before you incurred the expense.

(Exh. 1.)

2. On April 17, 2023, on Claimant's behalf, Mother filed a Fair Hearing Request.

3. On June 6, 2023, OAH notified the parties of a state-level fair hearing by videoconference scheduled for June 28, 2023.

4. All jurisdictional requirements are satisfied.

### **Mother Requests and Receives WRC Funds for a Vended Advocate for Claimant's IHSS Appeal**

5. Claimant is a five-year-old male consumer of WRC based on his qualifying diagnosis of autism. He presents with sensory issues. He has no control of his bowel and bladder functions. He lacks safety awareness. He requires constant supervision and support. He resides with his parents and sibling. He is enrolled in special education classes at his local elementary school.

6. On August 12, 2022, under the direction of the California Health and Human Services Agency, Department of Social Services, Los Angeles County awarded

Claimant 12.59 hours of IHSS and Protective Supervision per month. Mother believed the scant hours of IHSS and Protective Supervision awarded to Claimant was due to an inaccurate assessment of the severity of Claimant's needs. She therefore decided to pursue an appeal for additional IHSS and Protective Supervision hours.

7. In September 2022, Mother requested WRC provide an advocate to assist her with the IHSS appeal process. WRC referred Mother to Francis Yee of FHY Systems, LLC, doing business as FHY Consulting (FHY). Lee, through FHY, is the only provider vendored to provide advocacy services and supports to WRC consumers. WRC approved funding, using Budget Code 102, for Yee to provide a total of 50 hours of "IND/FAMILY TRAINING" as Claimant's IHSS advocate at rate of \$41.59 per hour. (See Exh. 7.)

8. The advocacy services Yee provided Claimant in connection with the IHSS appeal process included document review and organization, client consultation, documentation of daily activities and levels of functioning, policy analysis, drafting, and hearing preparation.

9. On January 9, 2023, which was two days before an IHSS appeal hearing scheduled for January 11, 2023, Mother removed Yee as Claimant's authorized representative. Yee stopped working on the IHSS appeal. Mother requested a postponement of the January 11, 2023 IHSS appeal hearing.

10. During this fair hearing, Mother expressed her dissatisfaction with Yee's handling of the IHSS appeal process. Among other things, Mother maintained Yee "did not believe in my case" and provided her with incorrect documents, which she could not remediate in time for the January 11, 2023 IHSS appeal hearing. Program Manager Bjoern Petersen explained Yee did not work out because he was "not responsive to the

family,” Claimant “was not his priority,” and he “didn’t have a systematic approach.” In a written statement admitted as Exhibit 20, Yee counters by attributing Mother’s dissatisfaction to his refusal to make certain representations he deemed to be untrue in a Statement of Position he prepared for the January 11, 2023 IHSS appeal hearing.

11. For the period October 1, 2022 through January 31, 2023, WRC paid Yee an amount totaling \$5,406.70. (See Exh. 7.)

### **Mother Retains and Pays Out-of-Pocket a Non-vendored Advocate for Claimant’s IHSS Appeal**

12. Ms. Luech and Ms. Lander are not vendored to provide services and supports to WRC consumers. Ms. Luech and Ms. Lander own Stand Out Advocates, LLC (Stand Out), which is also not vendored to provide services and supports to WRC consumers.

13. In September 2022, Ms. Lander conducted an intake interview with Mother. According to Ms. Lander’s testimony they discussed Claimant’s IHSS appeal in-depth and she provided Mother with tips “to do it on her own.” In December 2022, Mother again sought Ms. Lander’s advice. After Mother removed Yee as an authorized representative, Ms. Lander, acting on behalf of Stand Out, agreed to take over Claimant’s IHSS appeal. Mother informed WRC she believed Ms. Lander was the only person available and capable “to step in.”

14. Around this time, Claimant became a participant in the Self-Determination Program (SDP) and Mother sought to use funds from Claimant’s individual budget to pay Stand Out for advocacy services to complete the IHSS appeal. WRC informed Mother SDP participants are permitted to use services and supports available in SDP only when generic resources and supports are not available. WRC

further informed Mother the advocacy service previously approved for Claimant was a "one-time service" unavailable under SDP. WRC referred Mother to the Office of Clients' Rights Advocacy (OCRA).

15. As noted in a January 31, 2023 Client I.D. Note, "Unfortunately, OCRA could not take their case." (Exh. 5.) WRC subsequently offered to reach out to Yee "to make sure he completes the job he said he was going to [do]." (Exh. 5.) Mother determined to proceed with Stand Out.

16. On February 1, 2023, Mother and Stand Out entered a retainer agreement for advocacy support and services. Stand Out conducted another intake interview, charted Claimant's daily habits, and created videography of Claimant engaged in his scheduled programs and routines, among other things, in preparation for the IHSS appeal. On March 15, 2023, Stand Out represented Claimant at an IHSS appeal hearing, which resulted in an award of 253 IHSS and Protective Supervision hours per month.

17. Stand Out billed, and Mother paid out of pocket, \$7,500 for the advocacy services Stand Out provided in connection with Claimant's IHSS appeal. Stand Out Invoice 2681, admitted in evidence as Exhibit M, itemizes a \$2,000 non-refundable retainer fee, \$3,000 for "Preparation for IHSS Administrative Hearing scheduled for 3-15-2023," and \$2,500 for "Representation at IHSS Administrative Hearing." Ms. Luech testified Stand Out bills for its advocacy services at a rate of \$300 per hour, which is approximately seven times the WRC authorized and established rate for is vendored advocacy services.

18. Stand Out Invoice 2681 contains the notation "These services are part of Community Living Supports Service Code 320." That service code is among the service

codes appearing on a document titled *Self-Determination Program Service Codes by Budget Category* admitted in evidence as Exhibit 21.

## **Mother's Retention Agreement with Stand Out for On-going Advocacy**

19. During the fair hearing, Ms. Lander and Ms. Luech maintained as Claimant gets older "each year he will have new needs" requiring on-going advocacy "across all different realms—IHSS, IEP [Individual Education Plan], social security." Consequently, Stand Out anticipated work requiring a \$2,000 annual retainer fee and 30 hours of advocacy services at rate of \$300 per hour. Mother requested WRC to include these costs for Stand Out's future advocacy assistance to Claimant's SDP's spending budget. WRC denied the request correctly informing Mother SDP funds are limited to paying for federally funded services and advocacy services are not federally funded services.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. As the party asserting a claim for services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq., Claimant bears the burden of establishing by a preponderance of the evidence his entitlement to the requested services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Administration* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

2. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) "[T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Id.* at 325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

## **Applicable Law**

3. Under the Lanterman Act, developmentally disabled persons have a statutory right to treatment and habilitation services and supports. (Welf. & Inst. Code, §§ 4502, 4620, & 4646-4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (Welf. & Inst. Code, § 4501.)

4. Services and supports for persons with developmental disabilities are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall



include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (Welf. & Inst. Code, § 4512, subd. (b).)

5. Regional centers play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing an individual program plan (IPP) for the individual with developmental disabilities, taking into account the needs and preferences of the individual and the family, and promoting community integration, independent, productive, and normal lives, and stable and healthy environments. Regional centers are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting the goals stated in the IPP and reflect the preferences and choices of the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, & 4648.) Regional centers are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646.4, 4646.5, 4647, & 4648.) Regional centers must ensure “[u]tilization of generic services and supports when appropriate.” (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

6. Regional centers are authorized to “reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the [Department of Developmental Services] . . . and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the

vendorization or contracting requirements.” (Welf. & Inst. Code, § 4648, subd. (a)(3)(B).)

7. Regional centers are authorized to deliver treatment and habilitation services and supports to consumers and their families participating in SDP. (Welf. & Inst. Code, § 4685.8.) Participants develop a spending plan and budget for the services and supports needed to implement their IPP. Regional centers review the spending plan and budget for compliance with pertinent state and federal law, to ensure the services and supports are eligible for federal financial participation, and to verify providers are qualified. (*Id.*)

8. Notably, SDP “shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines [*sic*] eligible for federal financial participation.” (Welf. & Inst. Code, § 4685.8, subd. (c)(6).) Participants in SPD are to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).)

## **Discussion**

9. WRC’s only vendored provider of advocacy services, Yee, failed to meet Mother’s expectations during the three months he represented Claimant in connection with the IHSS appeal process. In her estimation, Yee was not meeting Claimant’s needs. Mother therefore retained Stand Out, a non-vendored provider, to replace Yee. Stand Out provided the advocacy services Yee was contracted to provide but without any emergency vendorization or otherwise completing any vendorization procedures. Furthermore, Stand Out provided the advocacy services at a cost approximately seven times the authorized and established WRC rate of payment, thus suggesting cost-

ineffectiveness. Under these circumstances, the Lanterman Act precludes WRC from funding the advocacy services Stand Out provided Claimant February 1 through March 15, 2023. Consequently, WRC lacks authority to refund Mother's out-of-pocket expenditure totaling \$7,500 for advocacy services Stand Out provided on Claimant's behalf. (Legal Conclusions 5 and 6.)

10. Claimant did not meet his burden establishing by a preponderance of the evidence the Lanterman Act authorizes reimbursement of out-of-pocket expenditures for advocacy services Stand Out rendered on his behalf of Claimant.

11. As an SDP participant, Claimant's spending plan is limited to expenditures for services and supports that are eligible for federal financial assistance. The advocacy Stand Out provides is not a service or support eligible for federal financial participation. Under these facts and circumstances, the Lanterman Act precludes expenditures from Claimant's SDP budget for advocacy services. (Legal Conclusions 7 and 8.)

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12. Claimant did not meet his burden establishing by a preponderance of the evidence the Lanterman Act authorizes expenditures for advocacy services from Claimant's SDP spending plan and budget.

## **ORDER**

Claimant's appeal is denied.

DATE:

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Pursuant to Welfare and Institutions Code section 4713, subdivision (b), either party may request in writing a reconsideration within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the decision.